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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,172	12/02/2003	Roger H. Hamilton	998_001CIP	4133

20874 7590 09/19/2007  
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EXAMINER
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YIP, WINNIE S

ART UNIT	PAPER NUMBER
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3636

MAIL DATE	DELIVERY MODE
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09/19/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/726,172	<b>Applicant(s)</b> HAMILTON ET AL.	
	<b>Examiner</b> Winnie Yip	<b>Art Unit</b> 3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,8-10 and 13-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,8-10 and 13-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

This office action is in response to applicant's amendment filed on June 27, 2007.

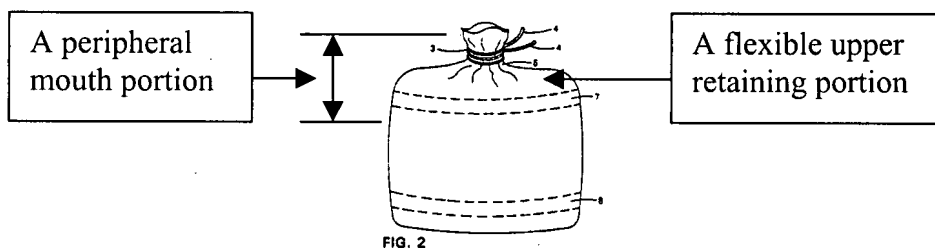
The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 8-10, 13-17 are pending in the application.

#### *Claim Rejections - 35 USC § 102*

1. Claims 1, 8, and 13 stand rejected under 35 U.S.C. 102(b) as being anticipated by Lucia, III et al. (US Patent No. 5,951,716).

Lucia, III et al. teach a carrier (1) comprising: a flexible open-top container (1) including a peripheral mouth portion (2), the mouth portion having an internal rigid plastic peripheral section having a plastic strap (7) inserted therein for maintaining a predetermined shape and size to and provides the mount portion that is capable to permit ingress and contains of a bottle such as a oxygen bottle therein, and a flexible upper bottle retaining portion being disposed above the peripheral mouth portion and having a drawstring (4) to selectively reduce a diameter of the retaining portion with respect to the size of the bottle to be contained, and wherein the container (1) forming an interior space providing means for retaining personal item therein. Wherein, the carrier of Lucia, III et al. is capable to retain an oxygen bottle to be loaded vertically as claimed.



***Claim Rejections - 35 USC § 103***

2. Claims 1, 8, and 13-17 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Locarno (US Patent No. 5,288,001) in view of Conte '531 and Lucia, III et al. (US Patent No. 5,951,716).

Locarno shows and discloses an elongated carrier for retaining an oxygen bottle to an appliance such as a wheelchair, the carrier comprising a flexible open-top container (2) being capably used for maintaining a close fitting relationship with an oxygen bottle (8) therein, the container (2) including an upper peripheral mouth portion (4) made of at least partially from a stiff material that maintains a predetermined shape and size and provides stiffness to the mouth portion to provide an upper bottle retaining portion for permitting ingress of an oxygen bottle (8) and for retaining the oxygen bottle without falling out of the carrier, a pair of upper flexible strap ends (18, 20) extending from each opposite sides of the upper bottle retaining portion and capably looped around an upper portion of the appliance (32, 34), and a pair of lower straps (26, 28) extending from each opposite sides of the lower portion of the container for looped and releasably engaging the bottom of the carrier with the legs of the appliance.

Locarno does not define the pair of lower straps including a strap end having hook and loop fasteners on each side of the strap end as claimed. Conte teaches a carrier (40) capably used for retaining an oxygen bottle (see Figs 4 and 8), the carrier (40) comprising a flexible open-top container (48), a pair of upper straps (44) extending away from opposite sides of the upper portion of the container, and a pair of lower straps (42) extending away from opposite sides of the lower portion of the container, the lower straps each having a strap end including

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hook and loop fasteners (43) on each side of each strap end to enable each of the lower straps being selectively looped for attaching the carrier to a vertical portion of an appliance such as a crutch or a walker. Therefore, it would have been obvious to one ordinary skill in the art at the time the invention was made to modify the carrier of Locarno having the pair of lower straps having hook and loop fasteners on each side of the strap end to enable selectively looped around a lower portion of the orthopedic appliance and fastened upon its as taught by Conte for selectively and securely attaching the lower portion of the straps of the carrier to a suitable a supported portion of the appliance.

Locarno further does not define the upper mouth portion including a peripheral plastic reinforcement portion allowing an oxygen bottle being loaded vertically therein as claimed. Lucia, III et al. teach a carrier (1) comprising: a flexible open-top container (1) including a peripheral mouth portion (2) having an internal rigid plastic peripheral section having a plastic strap (7) inserted therein for maintaining a predetermined shape and size to and provides the mount portion that is capable to permit ingress and contains of a bottle, and a flexible upper bottle retaining portion being disposed above the peripheral mouth portion and having a drawstring (4) to selectively reduce a diameter of the retaining portion with respect to the size of the bottle to be contained. It would have been obvious to one ordinary skill in the art, at the time the invention was made, to modify the carrier of Locarno combined with Conte having the mouth portion of the container and having an plastic strip being provide within a sleeve to provide a peripheral plastic reinforcing section and a drawstring passed therethrough the sleeve to provide a flexible upper bottle retaining portion as taught by Lucia, III et al. for reducing opening of the container to retain a bottle being loaded vertically inside of the container.

Regard to claim 8, Locarno's carrier is considered to have the container that provides the means for retaining personal items therein such as an oxygen bottle or other personal items without the oxygen bottle.

Regard to claims 16 and 17, Locarno teaches the carrier is capable to selectively attached one of the orthopedic appliance such as a wheelchair or a walker. Notice wheelchair and a walker is not part of the claimed invention. Therefore, how the carrier of Locarno modified Conte and Lucia, III et al. is attached to the wheelchair or walker is given very little patentability weight.

***Allowable Subject Matter***

3. Claims 9-10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

4. Applicant's arguments filed June 27, 2007 have been fully considered but they are not persuasive.

**A. Claim rejection - 35 U.S.C. 102:**

In response to applicant's argument that Lucia, III et al. '716 (hereinafter "Lucia") do not provide all structure limitation as claimed, it is not deemed persuasive. Anticipation is established when a single prior art reference discloses, expressly or under principles of inherency, each and every element of a claimed invention. *RCA Corp. v. Applied Digital Data Sys., Inc.*, 730 F.2d 1440, 221 USPQ 385, 388 (Fed. Cir. 1984). It is not necessary that the reference teach what the subject application teaches, but only that the claim read on something

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discloses in the reference, i.e., that all of the limitations in the claim be found in or fully met by the reference. *Kalman v. Kimberly Clark Corp.*, 713 F.2d 760,772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

In this case, applicant argues that Lucia does not teach the carrier comprising the limitation of “a flexible open-**top** container” and the “flexible supporting rings of Lucia are merely used for holding the shape of the bag and are not includes in a peripheral mouth portion” is not persuasive. As explained and applied above rejection, it is examiner’s position to reasonably and broadly interpret the reference: first, “an oxygen bottle” is not part of the claimed invention, it is cited for intended use only. Second, we do not know what is the weight of the oxygen bottle that the applicant intent to be used for carrying. Therefore, there is not much of patentability weight for the “oxygen bottle” is given in these application. Lucia teaches a carrier used for carrying objects with a certain amount of loading. Wherein Lucia teaches the carrier comprising a container/bag (1) having a peripheral mouth portion (2) for permitting ingress of the loading subject, a flexible ring (7) is considered being disposed along a peripheral mouth **portion** for maintaining a predetermined shaped and size of the container (see col. 5, lines 8-15) such as a cylindrical. Therefore, the carrier of Lucia is enable an oxygen bottle being permitted to ingress into the carrier and being loaded therein vertically, and a drawstring (4) providing at a flexible upper bottle retaining portion located over flexible right (7) to selectively reduce the diameter of the mouth opening of the carrier for preventing the subjects such as a retained oxygen bottle from falling out of the carrier as claimed and as same as the embodiment of claimed invention as show in Fig. 6. Therefore Lucia’s carrier is read on the claimed invention.

**B. Claim rejections -35 U.S.C. 103:**

5. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, We agree that Locarno does not define the carrier having all of limitations as suggested by the applicant's invention, otherwise our rejection would have been entered under section U.S.C. 102 of the statute. In this case, Locarno teaches use a carrier for carrying an oxygen bottle along with a walker. Locarno further teaches the carrier comprising an upper peripherally reinforced mouth section being reinforced by strap portions (4) around the peripheral mouth section for maintaining the mouth of the carrier open to allow an oxygen bottle ingress therein. Locarno also teaches the carrier having upper straps to wrap up with the handle of the walker, and lower straps to mount the carrier on the lower supports of the walker that solve a same problem as the claimed invention. Locarno lack to have the lower straps having a fastener such as claimed. Conte is only used to teach, as old and known, a strap being provided with fasteners such as buckles or hook and loop fastener such as (VELCRO) for selectively wrapping around a object and solve a same problem as suggested by applicant's invention. To discuss whether or not Conte teaches a carrier having "a peripherally reinforced mouth section" as claimed is irrelevant. Lucia is used as a reference only to teach a container would have been formed with a flexible ring (7) disposed along the upper portion of the carrier to take the elastic



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and flexibility characteristics of a plastic ring to provide a peripherally reinforced mouth section. All these references are direct features to a carrier for carrying a loaded object with the features as claimed invention to achieve results of more easily used. All of the three references precisely the same problem of providing a carrier for carrying a loaded subject thereon is existing structural foundations. Regardless, it would have been an obvious design choice for one of ordinary skill in the art at the time the invention was made to change the lower straps of Locarno with hook and loop fasteners to allow the strap being easily tighten and released form the support of the walker as taught by Conte and having plastic ring disposed on the peripherally mount section of a carrier as taught by Lucia to achieve the result as suggested by applicant. Therefore, a *prima facie case of obviousness* is established. The rejection stand granted.

***Action Is Made Final***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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*Inquiry Contacts*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Winnie Yip whose telephone number is 571-272-6870. The examiner can normally be reached on M-F (9:30-5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Dunn can be reached on 571-272-6670. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Winnie Yip  
Primary Examiner  
Art Unit 3636

wsy  
September 14, 2007